

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

JOHN H. TURNER,

Plaintiff,

v.

CAROLYN W. COLVIN,
Commissioner of Social Security,

Defendant.

Case No. 6:14-cv-214-PK

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Paul Papak issued Findings and Recommendation in this case on July 9, 2015. Dkt. 29. Judge Papak recommended that the Commissioner of Social Security's ("Commissioner") final decision denying Plaintiff's application for disability benefits be affirmed.

Under the Federal Magistrates Act ("Act"), the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C.

§ 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

Plaintiff timely filed an objection. Dkt. 31. Plaintiff argues that Judge Papak erroneously concluded that the Administrative Law Judge (“ALJ”) did not err in rejecting the testimony of Plaintiff’s treating nurse practitioner and in finding Plaintiff less than fully credible. Plaintiff urges the Court not to adopt the Findings and Recommendation and to remand this case to the Commissioner for an award of benefits. The Court has reviewed *de novo* Judge Papak’s Findings and Recommendation, as well as Plaintiff’s objections, the Commissioner’s response, and the underlying briefing before Judge Papak. Except as noted herein, the Court agrees with Judge Papak’s reasoning and ADOPTS those portions of the Findings and Recommendation.¹

For those portions of a magistrate’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate’s findings and recommendations if objection is made, “but not otherwise”). Although in the absence of objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the Court review the magistrate’s recommendations for “clear error on the face of the record.”

¹ The Court does not adopt the portion of the Findings and Recommendation finding that the ALJ’s conclusion that the medical evidence did not establish twelve consecutive months of allegedly disabling symptoms was a clear and convincing reason to reject Plaintiff’s credibility. Because the ALJ provided other clear and convincing reasons, however, this does not affect the Court’s decision.

For those portions of Judge Papak's Findings and Recommendation to which neither party has objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

The Findings and Recommendation (Dkt. 29) is ADOPTED as set forth herein. The decision of the Commissioner finding Plaintiff not to be disabled is AFFIRMED.

IT IS SO ORDERED.

DATED this 1st day of September, 2015.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge